

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

Robb Pfohl,

Respondent.

Case No. 15-161

License No. 963968

**Order Regarding Proposed
Decision**

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. Hearing took place before Administrative Law Judge John M. Priester on July 15, 2016. On July 22, 2016, Judge Priester issued a proposed decision. The proposed decision was served upon the Respondent and the Board.

At its regular meeting on August 5, 2016, the Board voted to accept the proposed decision without modification. The Respondent did not appeal within the time allowed by 282 Iowa Administrative Code 11.28(1).

ORDER

THEREFORE, the Board accepts the Proposed Decision in the matter as the Board's final ruling.

Dated this 22nd day of August, 2016.



Dr. Ann Lebo, Executive Director
On behalf of the Board

Copies to:

Robb Pfohl (first-class mail and restricted certified mail)
RESPONDENT

Gerald L. (Jay) Hammond (electronic mail)
ATTORNEY FOR RESPONDENT

Julie Bussanmas (electronic mail)
ATTORNEY FOR STATE

IOWA BOARD OF EDUCATIONAL EXAMINERS

RECEIVED
EXECUTIVE DIRECTOR
BOARD OF EDUCATIONAL EXAMINERS

JUL 26 2016

IN THE MATTER OF:) CASE NO. 15-161
) DIA NO. 16BEE017
ROBB PFOHL,)
)
Respondent) PROPOSED DECISION

On May 25, 2016, the Iowa Board of Educational Examiners (Board) issued a Notice of Hearing and Statement of Matters Asserted charging Robb Pfohl (Respondent) with the following one count:

Count I: Respondent is charged with committing an act of physical abuse of a student in violation of 282 IAC 25.3(1)(e)(1).

The count is based on one alleged incident between Respondent and a student that occurred on October 15, 2015. The hearing was held before the undersigned administrative law judge on July 15, 2016 at the Wallace State Office Building. Assistant Attorney General Julie Bussanmas represented the state. Attorney Jay Hammond represented the Respondent.

THE RECORD

The record includes the administrative record; testimony of the Respondent, and State Exhibits 1-10. The Respondent's exhibit A was admitted into evidence.

FINDINGS OF FACT

1. Respondent was issued Master Educator License (FOLDER #963968) by the Board of Educational Examiners. He has been licensed since 2005 to teach. He holds endorsements for K-6 Teacher Elementary Classroom, K-8 Instructional Strategist I: Mild/Moderate; K-12 Instructional Strategist II: BD/LD; and Special Education Consultant. (State Exhibit 3)
2. The Respondent received a Bachelor of Arts degree from the University of Iowa in Psychology in 2001; a BA in Elementary Education from the University of Northern Iowa in 2005; and a Master of Arts degree in Special Education in 2012. (Testimony of Respondent)

3. The Respondent was teaching at Highland Elementary in Waterloo at the start of the 2015 school year. He was teaching a Level 3 classroom with student with varying degrees of learning disabilities. He had Kindergarten through 2nd grade. So he was teaching three different levels of students. The Respondent had 5-10 children in his class.

He had a "timeout room" in his class room that he could place students in who were having behavioral issues. (Testimony of Respondent)

4. In the fall of 2015 another classroom of children with learning disabilities was added to Highland Elementary. This was for students in 3rd through 5th grade. There was another "timeout room" in the school but the teachers were told that the children with learning disabilities were not welcome in the other "time out room." Thus, the other teacher would bring students to the Respondent's "time out room" and then he would have to monitor his students and the extra students. This created a stressful environment for the Respondent. (Testimony of Respondent)

5. In October of 2015 the Respondent was trying to deal with this stressful situation but he was also being asked to escort some of his children onto the bus at the end of the day. There usually is a bus attendant who helps the children get on the bus. However the Respondent was asked to assist with his children. This also added stress to the Respondent's day.

6. On October 15, 2015 the Respondent was escorting his student onto the bus. He placed the child in his seat and was attaching the child's harness to the seatbelts on the bus. The child was struggling and being very difficult. While seated the child was striking out with his feet trying to kick the Respondent and other students as they loaded on the bus.

Eventually the Respondent lost his temper and swatted the child's bottom twice. He left the bus and came back and told the child that if he kept misbehaving the Respondent would spank his bottom again. (Testimony of Respondent, State Ex. 5)

7. The Respondent immediately knew what he had done was wrong and felt horrible about it. He was going to discuss the matter with his principal the next day. However the next day was Thursday and the principal was out of the school in meetings. Early on Friday morning the Respondent was called into the principal's office and asked about the event. The Respondent admitted to the act and was placed on administrative leave. The school began the process to terminate the Respondent's employment. The Respondent resigned his position. (Testimony of Respondent)

8. Criminal charges were filed against the Respondent for serious assault. He was found guilty and granted a deferred judgment. (Testimony of Respondent)
9. The Waterloo Community School District filed a Complaint against the Respondent with the Iowa Board of Educational Examiners. At the close of the hearing the State requested that the Respondent's Special Education endorsement should be revoked and his teaching certificate be suspended for three years based upon the Respondent's assault on the student. Respondent's counsel requested a reprimand based upon mitigating circumstances.
10. The Respondent has undergone counseling. After four sessions the therapist opined that the Respondent is not a threat to others. (Respondent Ex. A).

CONCLUSIONS OF LAW

The Legislature created the Iowa Board of Educational Examiners with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1)(2015). The Board has promulgated a Code of Professional Conduct and Ethics at 282 IAC chapter 25. 282 IAC 25.3 provides in relevant part:

282-25.3(272) Standards of professional conduct and ethics. Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

...

25.3(1) Standard I-conviction of crimes, sexual or other immoral conduct with or toward a student, ... Violation of this standard includes:

...

e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

(1) Committing any act of physical abuse of a student;

...

The Board's rules at Iowa Administrative Code chapter 282 do not define "physical abuse." The Department of Education has rules governing procedures for charging and investigating incidents of student abuse by any school employee. See 281 IAC chapter 102. The Department of Education's rules define "physical abuse" as a nonaccidental physical injury to the student as a result of the actions of the school employee. The rules further state that "injury" occurs when evidence of it is still apparent at least 24 hours after the occurrence. See 281 IAC 102.2.

These rules represent standards that all school employees are held and therefore provide some guidance in interpreting and applying the Board's rules on student abuse. However, the Department of Education's rules are not binding or controlling on the Board of Educational Examiners because they are not referenced or incorporated into the Board's rules.

The parties agreed that the Respondent's act constituted physical abuse of a student. There was no factual dispute and the incident was caught on the videotape. The only dispute in the hearing was what would be the appropriate sanction imposed upon the Respondent.

Sanction

The state asks for the revocation of the Respondent's special education endorsement and a three year suspension of Respondent's teaching license with no possibility of reinstatement unless Respondent completes Ethics for Educators class and completes a course in anger management. However, the requested sanction is disproportionate to the circumstances of the violations.

This was an isolated incident in an otherwise spotless teaching career. The undersigned believes that the Respondent is an excellent and effective teacher who made a mistake in this incident; a serious mistake mind you.

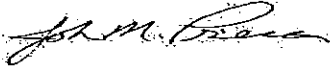
The facts in this case are very similar to the case of *Babe v. Iowa Board of Educational Examiners*, 14-79. In that case a teacher with special education training lost her temper and grabbed an unruly student. The grabbing left bruises on the child's arms. The Board approved a one year suspension in that case.

The facts and circumstances of the violation justify a period of suspension but for one year, not three. The Respondent's special education endorsement and his teaching certificate shall be suspended for one year. He shall be given credit for the time he was relieved of his duties. Therefore the suspension shall terminate on October 16, 2016.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Master Educator License and special education endorsement issued to Respondent Robb Pfohl is hereby SUSPENDED for a period of twelve months. The Respondent is given credit for the time that he has been administratively suspended from his teaching obligations. As a condition of relicensure the Respondent shall be required to complete an Ethics for Educators course at his own expense.

Dated this 22nd day of July, 2016.



John M. Priester
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Julie Bussanmas, Assistant Attorney General
Iowa Department of Justice
Hoover Building, 2nd Floor
Des Moines, Iowa 50319 (LOCAL)

Jay Hammond, Attorney for Respondent
ISEA
777 3rd Street
Des Moines, Iowa 50309 (CERTIFIED MAIL and FIRST-CLASS MAIL)

Dr. Ann Lebo, Executive Director
Iowa Board of Educational Examiners
Grimes State Office Building (LOCAL)

A proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected. An appeal is initiated by serving a notice of appeal with the board within 30 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief. 282 IAC 11.28.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA**

In the matter of)	Case No. 15-161
)	Folder No. 963968
ROBB PFOHL,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Friday, July 15, 2016, before Administrative Law Judge John Priester, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code (IAC) chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Julie Bussanmas
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Telephone (515) 281-5637

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Duane T. Magee, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Bussanmas at (515) 281-5637.

B. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

7. Respondent is charged with student abuse by committing any act of physical abuse of a student in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(1).

C. JURISDICTION AND LEGAL AUTHORITY

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 IAC chapter 11.

D. FACTUAL CIRCUMSTANCES

9. Respondent holds a MASTER EDUCATOR LICENSE (FOLDER # 963968) with the following endorsements: K-6 Teacher Elementary Classroom, K-8 Instructional Strategist I Mild/Moderate, K-12 Instructional Strategist II BD/LD, Special Education Consultant. Respondent's license is current and will next expire on December 31, 2019. Respondent also holds an expired Class C License with a K-12 Instructional Strategist II BD/LD which expired on December 31, 2011.

10. During the material facts of this case, Respondent was employed by the Waterloo Community School District as a Special Education teacher.

11. On October 29, 2015, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On January 14, 2016, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed Respondent committed an act of student abuse on a kindergarten student while on a bus.

E. SETTLEMENT

13. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 IAC rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 25th day of May, 2016.



Duane T. Magee, Executive Director
Iowa Board of Educational Examiners

Copies to:

Robb Pfohl (first-class mail and restricted certified mail)
RESPONDENT

Jay Hammond (electronic mail)
ATTORNEY FOR RESPONDENT

Julie Bussanmas (electronic mail)
ATTORNEY FOR STATE